

**From:** Ronald Adrine, Judge [<mailto:adriner@cmcoh.org>] **Sent:** Thursday, October 10, 2013 12:29 PM **To:** Pat Carroll; [vproper@cuyahogacounty.us](mailto:vproper@cuyahogacounty.us) **Cc:** [ncolon@cuyahogacounty.us](mailto:ncolon@cuyahogacounty.us); [VDevese@PS.CuyahogaCounty.us](mailto:VDevese@PS.CuyahogaCounty.us); [REDACTED]; [ddeluca@bedfordmuni.org](mailto:ddeluca@bedfordmuni.org); [dlabarron@cityofeuclid.com](mailto:dlabarron@cityofeuclid.com); Marilyn B. Cassidy, Judge; [earelm@clevelandmunicipalcourt.org](mailto:earelm@clevelandmunicipalcourt.org); [lastemaysa@clevelandmunicipalcourt.org](mailto:lastemaysa@clevelandmunicipalcourt.org); Colleen Radeff; Lauren C. Moore, Judge; Angela R.Stokes, Judge; [tarverp@clevelandmunicipalcourt.org](mailto:tarverp@clevelandmunicipalcourt.org); Joseph J. Zone, Judge; Emanuella Groves, Judge; [judgedawson@eccourt.com](mailto:judgetawson@eccourt.com); [REDACTED]; [kdesimone@parmamunicourt.org](mailto:kdesimone@parmamunicourt.org); [sschwark@parmamunicourt.org](mailto:sschwark@parmamunicourt.org); [darmstrong@pmcourt.com](mailto:darmstrong@pmcourt.com); [BFHagan@rrcourt.net](mailto:BFHagan@rrcourt.net); [dcfitzsimmons@rrcourt.net](mailto:dcfitzsimmons@rrcourt.net); [kjmontgomery@shakerheightscourt.org](mailto:kjmontgomery@shakerheightscourt.org); [REDACTED]; [REDACTED]; [REDACTED] [cp1nf@cuyahogacounty.us](mailto:cp1nf@cuyahogacounty.us); [tmcginty@prosecutor.cuyahogacounty.us](mailto:tmcginty@prosecutor.cuyahogacounty.us); [ksmolen@bedfordmuni.org](mailto:ksmolen@bedfordmuni.org); [tomalley@cuyahogacounty.us](mailto:tomalley@cuyahogacounty.us); [blanghenry@city.cleveland.oh.us](mailto:blanghenry@city.cleveland.oh.us); [jerome.dowling@lakewoodoh.net](mailto:jerome.dowling@lakewoodoh.net); O'Neill, Terri; [Michael.Summers@lakewoodoh.net](mailto:Michael.Summers@lakewoodoh.net); Butler, Kevin; Roessner, Pamela; Barbara Langhenry **Subject:** RE: Formal Legal request re: REDSS Moving Violation Fees

Pat,

As always, you reduced to writing what many of us are thinking. Thanks for your scholarship and erudition. I will forward this information to Cleveland's Law Director, forthwith, for further consideration.

Ron Adrine

**From:** Pat Carroll [[mailto:\[REDACTED\]](mailto:[REDACTED])] **Sent:** Wednesday, October 09, 2013 10:55 PM **To:** [vproper@cuyahogacounty.us](mailto:vproper@cuyahogacounty.us) **Cc:** [ncolon@cuyahogacounty.us](mailto:ncolon@cuyahogacounty.us); [VDevese@PS.CuyahogaCounty.us](mailto:VDevese@PS.CuyahogaCounty.us); [REDACTED]; [ddeluca@bedfordmuni.org](mailto:ddeluca@bedfordmuni.org); [dlabarron@cityofeuclid.com](mailto:dlabarron@cityofeuclid.com); Ronald Adrine, Judge; Marilyn B. Cassidy, Judge; [earelm@clevelandmunicipalcourt.org](mailto:earelm@clevelandmunicipalcourt.org); [lastemaysa@clevelandmunicipalcourt.org](mailto:lastemaysa@clevelandmunicipalcourt.org); Colleen Radeff; Lauren C. Moore, Judge; Angela R.Stokes, Judge; [tarverp@clevelandmunicipalcourt.org](mailto:tarverp@clevelandmunicipalcourt.org); Joseph J. Zone, Judge; Emanuella



Groves, Judge; [judgedawson@eccourt.com](mailto:judgetawson@eccourt.com); [REDACTED];  
[kdesimone@parmamunicourt.org](mailto:kdesimone@parmamunicourt.org); [sschwark@parmamunicourt.org](mailto:sschwark@parmamunicourt.org);  
[darmstrong@pmcourt.com](mailto:darmstrong@pmcourt.com); [BFHagan@rrcourt.net](mailto:BFHagan@rrcourt.net);  
[dcfitzsimmons@rrcourt.net](mailto:dcfitzsimmons@rrcourt.net); [kjmontgomery@shakerheightscourt.org](mailto:kjmontgomery@shakerheightscourt.org);  
[REDACTED]  
[REDACTED] [cp1nf@cuyahogacounty.us](mailto:cp1nf@cuyahogacounty.us);  
[tmcginty@prosecutor.cuyahogacounty.us](mailto:tmcginty@prosecutor.cuyahogacounty.us); [ksmolen@bedfordmuni.org](mailto:ksmolen@bedfordmuni.org);  
[tomalley@cuyahogacounty.us](mailto:tomalley@cuyahogacounty.us); [blanghenry@city.cleveland.oh.us](mailto:blanghenry@city.cleveland.oh.us);  
[jerome.dowling@lakewoodoh.net](mailto:jerome.dowling@lakewoodoh.net); [Terri.ONeill@lakewoodoh.net](mailto:Terri.ONeill@lakewoodoh.net);  
[Michael.Summers@lakewoodoh.net](mailto:Michael.Summers@lakewoodoh.net); [Kevin.Butler@lakewoodoh.net](mailto:Kevin.Butler@lakewoodoh.net);  
[pamela.roessner@lakewoodoh.net](mailto:pamela.roessner@lakewoodoh.net); [REDACTED]

**Subject:** Re: Formal Legal request re: REDSS Moving Violation Fees

October 9, 2013

Ms. Vallerie Propper  
Assistant Deputy Chief  
Public Safety & Justice Services  
310 West Lakeside Avenue  
Cleveland, Ohio 44113

Dear Ms. Propper

I am writing in response to your letter of October 7, 2013 directing municipal courts to assess an additional court cost to all moving violation charges. As I understand your directive, Cuyahoga County Administration is requiring municipal court clerks to assess multiple, separate court cost for each moving violation in a traffic case in order to support the Cuyahoga County Regional Information System. This directive is based upon Opinion No. 2013-025 of the Ohio Attorney General. This opinion, which relied on prior Attorney General Opinions and statutory interpretation without regard to applicable court decisions raises serious concerns, the primary concern is the potential risk of liability to both municipal court clerks and individual

municipalities in Cuyahoga County.

Absent from both the Attorney General's Opinion and your correspondence is any recognition or discussion of the issues raised in Lingo v. State of Ohio. This case was filed in the Cuyahoga County Common Pleas Court as a class action case against the Clerk of the Berea Municipal Court. Case No. CV-05-564761. The basis of the claim was the imposition of multiple court costs being imposed on individual charges rather than a single case containing multiple charges. In his opinion and decision, Judge Richard Ambrose found that general court costs could only be assessed on a per case, not a per charge basis. Although the court found that a special projects costs could be imposed on a per charge basis, that conclusion was based on the holding in Middleburg Heights v. Quinnes, 120 Ohio St. 3d 534, 2008 Ohio 6811 and the specific language of R.C. 1901.26, which authorized the costs to be assessed on a per charge basis. (R.C. 2947.093 does not contain any specific or explicit "per charge" language.) The court also granted in part the plaintiffs' motion for class certification.

On appeal, the court of appeals reversed the decision based solely on the grounds of res judicata. Lingo v. State of Ohio, No. 97537, 8th. Dist. 2012 Ohio 2391. Thus without addressing the findings of the trial court that the assessment of multiple court costs on a per charge basis was improper, the Court of Appeals held that the appropriate remedy was appeal from the individual conviction rather than by way of a civil class action. Thus, the finding by the Common Pleas Court that imposing court costs on a per charge rather than a per case basis still stands, only the method of challenging the impropriety was addressed by the Court of Appeals.

On February 6, 2013, the Supreme Court of Ohio accepted the appeal for review. 134 Ohio St. 3d 1448, 2013 Ohio 347. The

case is currently pending before the Ohio Supreme Court.

The claims raised in Lingo, have a potential liability in excess of millions of dollars. Although a municipal court is not a legal entity and therefore cannot be a party in a civil action, there is a risk of potential liability against the clerks of the municipal court, as well as the individual municipalities in the event the Supreme Court determines that a civil class action may be maintained. By requiring municipal court clerks to collect multiple court costs on a per charge basis, when this issue is pending before the Supreme Court, exposes both court clerks and municipalities to liability.

In light of the decision of the Supreme Court to review the issue of multiple court costs, I am requesting that your directive to respond within fourteen (14) days be stayed pending the decision by the Ohio Supreme Court in Lingo. Once that decision is issued, all parties involved will be able to proceed according to law.

Although the court recognizes that Opinions of the Ohio Attorney General of Ohio are persuasive, they are not binding authority. State ex rel. N. Olmsted Fire Fighters Assn. v. N. Olmsted, 64 Ohio St.3d 530,533 (1992). Written Opinions of the Ohio Attorney General are useful as guidance, but do not have precedential value. State ex rel. Atkins v. Harrison Cty. Bd. of Cty. Commissioners, No. 09-HA-7, 7th. Dist., 2010 Ohio 3160. I would submit that a definitive decision by the Ohio Supreme Court is not only determinative of this issue, but also protects all municipal officers and cities from civil liability. In the alternative, I would request the Cuyahoga County Administration and Prosecutor to set out the course of action to defend and indemnify the clerk of court for any liability imposed based upon compliance with your directive.

It should also be noted that notwithstanding the Syllabus of the Attorney General's Opinion requiring a municipal court to

impose the additional court costs, the opinion itself states:

The additional court cost of R. C. 2949.093 is instead a separate court cost that a municipal court may impose in a case each time a person is convicted of, or pleads guilty to, a moving violation. . . . Nor does R.C. 2947.23 prohibit a municipal court from imposing the additional court cost of R.C. 2949.093 more than once per case when a person is convicted of or pleads guilty to, more than one moving violation. (Emphasis added.) Page 7, Opinion No. 2013-025.

“May” implies discretion, not a mandatory duty. In statutory construction, the word “may” is construed as permissive and the word “shall” is to be construed as mandatory unless there appears a clear and unequivocal legislative intent that they receive a construction other than their ordinary usage. Dorrian v. Scioto Conservancy Dist. 27 Ohio St. 2d 102 (1971).

In addition, the mere fact that the attorney General’s Opinion finds that the imposition of additional court cost is not prohibited does not necessarily mean that it is required.

Regardless of the legal issues involved, I would also ask your office to review its position on this issue as well as the costs of operations of the data system. Municipal courts are currently paying to the Cuyahoga County Regional Information System a court cost of \$5.00 for each case involving a moving traffic conviction in addition to a monthly assessment. Thus, while I realize that funds are short for governments, they are also short for individuals as well. While I do not condone traffic offenses, the effect of the county’s position is to impose higher courts costs on the least egregious violations. Thus, under your directive, a defendant with charges assault, theft, possessions of illegal drugs and a weapon will pay one (1) singular court costs while a person with a seatbelt violation, faulty brake light, expired license plate or

burnt out license plate light will be required to pay multiple court costs.

Finally, as you will note, I have forwarded this response to the other municipal judges in Cuyahoga County as well as others who are involved in this issue for review. Any recipient may feel free to forward this to their mayors, law directors, municipal court clerk or anyone if they think the comments are appropriate. In your letter to me it was sent by “blind copy” thereby concealing all of the other recipients. In light of the serious issues involved and the need for all of the stakeholders to be aware of the same information being disseminated, I am asking that any future correspondence in this regard also be distributed in a way in which all of us are aware of what is going on with Cuyahoga County and other city administrations and municipal courts.

Respectfully submitted,

Judge Patrick Carroll